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NO. 58932-6-1

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

**FILED**  
MAR 11 2008  
CLERK OF SUPREME COURT  
STATE OF WASHINGTON

\_\_\_\_\_  
\_\_\_\_\_  
THE ESTATE OF PAMELA L. KISSINGER,

Respondent,

v.

JOSHUA HOGE,

Appellant.

\_\_\_\_\_  
\_\_\_\_\_  
PETITION FOR REVIEW

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FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON



ORIGINAL

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**A. IDENTITY OF PETITIONER**

Joshua Hoge, the appellant, asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this Petition.

**B. COURT OF APPEALS DECISION**

The Court of Appeals filed a published opinion in the above entitled case on December 3, 2007 and an order denying the motions for reconsideration on January 17, 2008. A copy of the decision is in the Appendix at pages A- 1 through 6. A copy of the order denying the motions for reconsideration is in the Appendix at page A- 7. Joshua Hoge is seeking review of that portion of the Court of Appeals decision that found his actions in killing his mother were unlawful, although he was found not guilty by reason of insanity of that killing.

**C. ISSUES PRESENTED FOR REVIEW**

1. For purposes of the slayer's statute, can a person's actions legally be termed unlawful when that person was found not guilty by reason of insanity for those very actions?

2. For purposes of the slayer's statute, is Equal Protection of the Laws violated when a person's actions are not termed unlawful when found not guilty because of self defense, but a person's actions are termed unlawful when found not guilty by reason of insanity?

#### **D. STATEMENT OF THE CASE**

Joshua Hoge was found not guilty by reason of insanity for the killing of his mother. Mr. Hoge has a lengthy history of serious mental illness. He has been diagnosed with chronic schizophrenia, paranoid type. He was first diagnosed with schizophrenia as a teenager. He has been hospitalized several times at both Harborview and Western State Hospital. His symptoms over the years have remained consistent. He has hallucinations, hears voices and has lived under the dominating influence of his delusions. His delusions over the years have included the longstanding beliefs, among others, that his mother and brother were imposters, that he has a daughter (he has no children), that he has an ability to perform magic, that spaceships have been involved with his life, and beliefs about the ability to travel through time. As Dr. Leong, the State appointed expert in the murder case, points out in his report, even

with substantial doses of antipsychotic medication, Mr. Hoge had remained delusional. CP 142

Mr. Hoge has also been diagnosed with Capgras syndrome. This is a psychotic illness in which a person believes certain people in his life are actually imposters. Usually that person is a relative, as it was with Mr. Hoge. For some time, including the time of the killing, Mr. Hoge believed that his mother was not in fact his mother but actually an imposter taking his mother's place.

Mr. Hoge's statements around the time of his arrest for his mother's killing show the extent of his delusions. His statements, reported in Dr. Leong's evaluation, include: "They killed my child, they killed my baby, I had to do it." (He has no child.) "They used a magic spaceship..." "I stabbed him with the knife...he must be magic." When asked about searching for this missing child, he responded "She is probably sold you know...to outer space." "I made two people die...They were not my family and they were spending my mom's money." Again, about his "child", he said "It doesn't matter. They come and gather everything and use time machines." "I got in a fight with people that looked like my family...2 died somehow one didn't...**Did I die? I wanna know if I died... brain aroma**" and then said something about

dying from brain magic. [Emphasis added] He asked the deputy if he could get him or make him a spaceship. This is just a sampling of some of Mr. Hoge's statements in the hours following the deaths. CP 116-118

Mr. Hoge was criminally charged with the killings of his mother and brother. In that criminal matter, both the state and the defense experts were in agreement that Mr. Hoge was legally insane at the time of the killings. Both diagnosed Mr. Hoge with Schizophrenia and Capgras syndrome. The motion for an acquittal by reason of insanity was a joint motion by both the state and the defense. The Superior Court found both that:

(10) As a result of the **proportion and magnitude of his mental disease** or defect, the defendant's mind was affected to such an extent that **he was unable to appreciate the nature and quality of his acts** on June 23, 1999 when he killed Pamela and James Kissinger and attacked Walter Williams.

(11) As a result of the **proportion and magnitude of his mental disease** or defect, the **defendant's mind was affected to such an extent that he was unable to know right from wrong** on June 23, 1999 when he killed Pamela and James Kissinger and attacked Walter Williams. [Emphasis added] CP 143-144

Indeed, the estate of Mr. Hoge's mother filed a lawsuit claiming a mental health agency was in fact liable for her death for not treating the

obvious signs of Mr. Hoge's most serious mental illness. Mr. Hoge went to the mental health agency to get a prescription for his antipsychotic medication. He was told he could not get them for a week. Before the week was up, he killed his mother while he was in a psychotic state. That estate is now claiming that Mr. Hoge is legally responsible for what he did.

CP 145

The trial court entered an order finding that Mr. Hoge's actions were both willful and unlawful. The Court of Appeals held that the trial court applied the incorrect standard for determining whether Mr. Hoge's actions were willful and remanded to the trial court for further proceedings. The court of appeals also held that Mr. Hoge's actions were unlawful.

#### **E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

##### **1. THE SUPREME COURT SHOULD ACCEPT REVIEW BECAUSE THIS PETITION INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST.**

Several cases are illustrative of the factors that the Court uses to determine issues of substantial public interest. In State v. Watson, 155 Wn.2d 574, 122 P.3d 903 (2005), the court said that case was a prime

example of an issue of substantial public interest because, although it immediately just applied to the affected parties, it potentially could affect every sentence where DOSA was at issue.

In Washington v. Bowen, 51 Wn. App. 42, 751 P.2d 1226 (1988), the court was looking at when a court can accept review of a moot case. The overriding principle is whether an issue of substantial public interest is involved. The factors the court looks to are, among others, whether the issue has been addressed in this state, and if the issue is likely to recur.

In the case before this court, those factors are met to present an issue of substantial public interest. While the immediate decision in this case will affect the parties to this case, it also will affect any other similarly situated persons.

The issue presented to the court is one of first impression and should be decided by the Supreme Court. It should also be noted that many other states have decided this issue, but Washington has not. See especially Ford v. Ford, 307 Md. 105, 512 A.2d 389 (1966) which includes a thorough documentation of how other states have ruled on this issue.

Finally this issue is likely to recur. Although a very small

percentage of murder cases result in a finding of not guilty by reason of insanity, a significant portion of those involve a victim family member.

a. **THE ISSUE OF SUBSTANTIAL PUBLIC INTEREST PRESENTED IN THIS CASE IS WHETHER JOSHUA HOGE'S DELUSIONAL ACTS CANNOT BE LEGALLY TERMED UNLAWFUL FOR PURPOSES OF THE SLAYER'S STATUTE.**

RCW 11.84.020 is the slayer's statute. That statute says:

No slayer shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but shall pass as provided in the sections following.

Then RCW 11.84.010 defines "slayer". It says:

As used in this chapter:

(1) "Slayer" shall mean any person who participates, either as a principal or an accessory before the fact, in the willful and **unlawful** killing of any other person.

[Emphasis added]

The question presented is whether, for purposes of the slayer's statute, an individual who has been found not guilty by reason of insanity can be said to have acted unlawfully. RCW 9A.12.010 prescribes that insanity is a defense. It's a complete defense to the crime. RCW 10.77.030(2) also prescribes that insanity is a defense. RCW 10.77.080 dictates that the defendant may move for a judgment of acquittal. Joshua Hoge was acquitted of the crimes for which he was charged. The criminal

court found that Mr. Hoge had a complete defense to the charge (as opposed to a jury finding of not guilty because the state's burden was not met). The finding is one of not guilty. Just as in the case where the defense is justifiable homicide, the finding is not guilty. Insanity is an excuse to the crime of murder. It is inconsistent to say that one is not guilty because of a complete defense and has no criminal responsibility but that the act underlying those findings is unlawful. No legal justification for that proposition has been propounded.

The established rule of law in Washington is that a finding of not guilty by reason of insanity is a **complete defense** to the crime of murder. It completely absolves a defendant of all criminal responsibility. State v. Crenshaw, 98 Wn. 2d 789, 659 P.2d 488 (1983), State v. White, 60 Wn. 2d 551, 592, 374 P.2d 942 (1962), State v. Hutsell, 120 Wn.2d 913, 845 P.2d 1325 (1993).

The estate flip flops the question before this court. The estate would have this court rule as to whether Mr. Hoge has shown his actions to be lawful. The Slayer's Statute does not require innocence, it requires the estate to prove unlawfulness. Cook v. Gisler, 20 Wn. App. 677, 582 P.2d 550 (1978) establishes that distinction when they decided which party had

the burden of proof. It said at pp. 551-552:

This appeal presents two basic issues, (1) did the trial court apply the proper burden of proof when it required the **defendants to establish by a preponderance of the evidence that the killing was unlawful instead of requiring the plaintiff to prove that it was lawful?** [Emphasis added]

The Appellate Court relied on Cook for the proposition that homicide is an unlawful act unless it is excusable or justifiable. Mr. Hoge would respectfully suggest that Cook does not stand for that proposition.

In Cook, the potential beneficiary had killed her husband. The wife claimed self defense which would be a justifiable homicide. Hence the court analyzed the case in the context of justifiable homicide. The court discussed justifiable homicide because that was the issue presented to it. Nowhere does it make a broader pronouncement that homicide is unlawful unless it is excusable or justifiable. Cook did not address or answer the question before this court. It's important to note that in Cook the trial court, whose decision was affirmed, did not make a specific finding that the homicide was justifiable, it simply found that the estate did not prove by a preponderance that the homicide was unlawful. Similarly here, the estate has not proven that Mr. Hoge's killing of his mother was

unlawful

The Appellate Court also refers in its opinion to Leavy, Taber, Schultz, & Bergdahl v. Metropolitan Life Insurance Co., 20 Wn. App. 503, 507, 581 P.2d 167 (1978) that said a “criminal conviction is not a sine qua non to application of the slayer’s act.” That case is not applicable to Mr. Hoge’s situation. The case cited was addressing situations in which juries found that the prosecution had not met its burden, when criminal charges were not filed, or where a lesser offense was proven and the question was one of wilfulness. This situation is completely different because here the criminal court found a complete defense to the charged offense. Charges were filed, and a finding of not guilty due to a defense was the result. It’s not a case where the prosecution did not meet its burden. Specifically with regard to the insanity defense, Washington courts have consistently held that one is absolved of all criminal responsibility. A conviction may not be necessary, but a finding of a complete defense to the charged crime is determinative for purposes of the unlawfulness prong of the slayer’s statute.

The result would likely be different if our legislature allowed for a finding of guilty but mentally ill, as some states have done. In

Washington, however, insanity acts as a complete defense absolving the defendant of all criminal responsibility. Although this result may be distasteful to some, the term unlawful has a legal meaning which must be adhered to. The estate did not meet its burden of showing Mr. Hoge's actions were unlawful.

Neither is RCW 9A.32.010 determinative as to whether a finding of not guilty by reason of insanity renders an action unlawful. It says:

9A.32.010. Homicide defined.

Homicide is the killing of a human being by the act, procurement, or omission of another, death occurring at any time, and is either (1) murder, (2) homicide by abuse, (3) manslaughter, (4) excusable homicide, or (5) justifiable homicide.

The definition of homicide in RCW 9A.32.010 does not use the terms lawful or unlawful. And that statute does not even refer to a finding of not guilty by reason of insanity so it cannot control that finding. A finding of not guilty by reason of insanity does not fit within any of the five categories mentioned in RCW 9A.32.010. It is opined that the not guilty by reason of insanity finding is unlawful because it does not fit excusable or justifiable homicide. However, the same analysis would posit that it is not unlawful because it is not murder (Mr. Hoge was acquitted of murder), homicide by abuse, or manslaughter.

A person who has been found not guilty due to self defense is in the same position as a person found not guilty by reason of insanity. In the self defense case, the person has taken the actions amounting to the crime but the act is excusable under the criminal law because of the surrounding circumstances. The same holds true for a person found insane. The person has taken the action amounting to the crime, but because of the surrounding circumstances he is excused of all criminal responsibility and found not guilty.

**b. THE ISSUE BEFORE THIS COURT IS ONE OF SUBSTANTIAL PUBLIC INTEREST BECAUSE THE PREDOMINANT THRUST OF AMERICAN LAW FAVORS JOSHUA HOGE.**

This is a case of substantial public interest. Many other states have decided this issue. Washington has not. It would seem appropriate that the Supreme Court resolve this issue. Further, the vast majority of jurisdictions have decided in favor of the insanity acquittee. See, Ford, supra.

Although the estate would suggest that because the other states that have looked at this issue and decided in Mr. Hoge's favor do not have identical statutes or jurisprudence as Washington, that somehow lessens Mr.

Hoge's argument; the opposite is true. Certainly each state has its own jurisprudence. Some states have encoded the slayers statute; some states have looked to the common law. The language of the various slayers statutes include terms common to Washington and some different: terms such as willful, intentional, felonious, unlawful.

The important piece is that the full force of American jurisprudence in nearly each and every case has been that insanity precludes the invocation of the slayer's statute. This includes courts that have looked to the common law for guidance, courts that have analyzed statutes and also eminent text authorities. This also includes the one state that has identical language to our own. Sobel v. The National Bank and Trust Company of Erie, 71 Pa. D. & C. 321 (1950).

**2. THE SUPREME COURT SHOULD  
ACCEPT REVIEW BECAUSE A  
SIGNIFICANT QUESTION OF LAW  
UNDER THE CONSTITUTION  
OF WASHINGTON AND THE UNITED  
STATES IS INVOLVED.**

**a. TO TREAT AN INSANITY ACQUITTEE  
DIFFERENTLY THAN A JUSTIFIABLE  
HOMICIDE ACQUITTEE WITH**

**RESPECT TO THE UNLAWFULNESS  
PRONG OF THE SLAYER'S STATUTE  
DENIES THE INSANITY ACQUITTEE  
THE EQUAL PROTECTION OF THE  
LAW.**

To hold that a person who is acquitted by reason of insanity when a complete defense has been established cannot inherit because his actions were unlawful, but a person who is acquitted because a justifiable homicide defense was successful can inherit because his actions were not unlawful, would violate the equal protection of the law. No rational purpose would be served by that distinction.

In In re. Bratz, 101 Wn. App. 662, 5 P.3d 759 (2000) the court reiterated the long standing principle that the "Equal Protection Clause requires that persons similarly situated with respect to legitimate purposes of the laws receive like treatment." The first question under equal protection analysis is under what standard the legislative classification should be analyzed. The issue of the proper classification was raised in State v. Danis, 64 Wn. App. 814, 826 P.2d 1096 (1992). In a footnote, the court indicated that the mentally ill could be considered a semi-suspect class requiring intermediate scrutiny. However, the disparate treatment of these two groups cannot pass even the rational basis test.

The Bratz court described the analysis to be applied under the rational basis test. It said at p. 669:

Under rational basis review, a statute must satisfy the following three-part test to pass constitutional muster:

1. Does the classification apply alike to all members within the designated class?
2. Does some rational basis exist for reasonably distinguishing between those within the class and those outside the class? and
3. Does the challenged classification bear a rational relation to the purpose of the challenged statute?

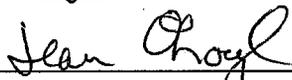
The members of the class are all people found not guilty of murder because they have established a complete defense to the charge. Those members would not be treated similarly under the slayer's statute with respect to whether their actions are considered unlawful under the Court of Appeals opinion as opposed to the Cook Court's opinion, supra. A person who successfully interposes a defense of self defense admits he has committed the actions of a murder, but because of the surrounding circumstances his actions are not criminal. The same is true of an insanity acquittee. He admits he has committed the actions of a murder, but because of the surrounding circumstances his actions are not criminal.

With regard to the unlawfulness prong of the slayer's statute, there is no rational basis for treating two people acquitted because of the establishment of a defense differently. There is no rational relation to the purpose of the statute for this distinction. Similarly situated people must receive like treatment. All people acquitted of murder because of a complete defense to the charge must be treated similarly with regard to whether their actions were unlawful for purposes of the slayer's statute.

#### **E. CONCLUSION**

Mr. Hoge is asking this Court to find that the estate has not met its burden of showing his actions were unlawful.

Respectfully submitted this 18<sup>th</sup> day of February, 2008.

  
\_\_\_\_\_  
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#### **CERTIFICATE**

I certify that I mailed a copy of the foregoing Petition For Review to Mark Leemon, Respondent's attorney, at 2505 2<sup>nd</sup> Ave. Ste 610, Seattle, WA 98121-1483, postage prepaid on February 18, 2008

  
\_\_\_\_\_  
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Attorney fro Appellant

# APPENDIX A

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

IN RE THE ESTATE OF PAMELA L. KISSINGER; LEONARD HOSS, Personal Representative,	)	No. 58932-6-1
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	PUBLISHED OPINION
	)	
JOSHUA HOGE,	)	
	)	
Appellant.	)	FILED: December 3, 2007

**GROSSE, J.** – Our state’s slayer statute has been interpreted to not prevent a non-willful slayer from inheriting. However, a slayer found not guilty by reason of insanity does not, ipso facto, act in a non-willful manner. Under the slayer statute a slayer must act with intent and design. In contrast, the insanity defense encompasses acts in which the slayer can intentionally kill without necessarily understanding the consequences and the traditional test of being unable to perceive the nature and quality of the act committed. The trial court must determine whether the delusions suffered by Joshua Hoge are such that he did not designedly and intentionally kill his mother and stepbrother. Here, the trial court determined that Hoge acted willfully using the modern criminal code’s definition of willful, which requires nothing more than knowledge. Hence, we must remand to the trial court to apply the appropriate legal standard to the facts.

### FACTS

On June 23, 1999, Pamela Kissinger and her son, James Zachary Kissinger, were killed by Kissinger's eldest son, Joshua Hoge. Hoge was charged with two counts of first degree murder and one count of first degree assault (for assaulting another occupant of the house). On January 13, 2000, Hoge was found not guilty by reason of insanity. He was committed to Western State Hospital where he remains.

Hoge has a long history of serious mental illness. He has been in and out of mental institutions since he was a teenager and has been diagnosed with chronic paranoid Schizophrenia. Hoge has also been diagnosed with Capgras syndrome, a psychotic illness in which a person believes certain people in his life are imposters. The Capgras syndrome was the possible motivating factor in his killing of his mother and half brother.

The stipulated facts included a portion of the psychiatric evaluation by Dr. Gregory Leong, the State appointed expert in the murder case. The evaluation noted that paranoid themes dominated Hoge's delusions and this paranoia included a longstanding misidentification delusion that his mother had "been replaced by a physically identical . . . individual. This delusionally held Capgras object is viewed . . . with a combination of hostility and fear."

The trial court here concluded as a matter of law that Hoge killed Kissinger willfully under the modern criminal code definition of that term.<sup>1</sup> The trial court further concluded that the killing was unlawful as it was a homicide and neither

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<sup>1</sup> RCW 9A.04.090 and 9A.08.010(4).

justifiable nor excusable. Based on those conclusions, the trial court held the slayer statute prohibited Hoge from sharing in the proceeds of the settlement of the wrongful death claim arising from the death of Kissinger. Hoge appeals alleging that the killing was neither unlawful nor willful.

### ANALYSIS

Washington's slayer statute is designed to prevent a slayer who commits a homicide from acquiring any property or receiving any benefit resulting from the death of the decedent.<sup>2</sup> A slayer is defined as "any person who participates, either as a principal or an accessory before the fact, in the willful and unlawful killing of any other person."<sup>3</sup> In such cases, the slayer is deemed to predecease the decedent and is thus ineligible to share in the proceeds of the decedent's estate.

By its terms, the statute requires proof that the slaying was both willful and unlawful. Hoge argues that the determination of not guilty by reason of insanity completely absolves him of any criminal liability. That may be true, but "[a] criminal conviction is not a sine qua non to application of the slayer's act."<sup>4</sup> The slayer statute is not penal. It is to be construed broadly to effect the state's policy that no person shall be allowed to profit by his own wrong-doing.<sup>5</sup>

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<sup>2</sup> RCW 11.84.020.

<sup>3</sup> RCW 11.84.010.

<sup>4</sup> Leavy, Taber, Schultz & Bergdahl v. Metropolitan Life Ins. Co., 20 Wn. App. 503, 507, 581 P.2d 167 (1978).

<sup>5</sup> RCW 11.84.900.

As a matter of law, a homicide is an unlawful act unless it is excusable or justifiable.<sup>6</sup> The criminal code defines what defenses make a homicide lawful and insanity is not one of them.<sup>7</sup> Thus, the killing of Kissinger is unlawful for purposes of the slayer statute.

Hoge argues that his act cannot be deemed willful because he could not form the requisite intent. In New York Life Insurance v. Jones,<sup>8</sup> the Supreme Court defined willfully for purposes of the slayer statute to mean "intentionally and designedly." The court stated:

Willfully means intentionally and designedly. State v. Russell, 73 Wn.2d 903, 442 P.2d 988 (1968); State v. Spino, 61 Wn.2d 246, 377 P.2d 868 (1963); Webster's Third New International Dictionary 2617 (1968). See 45 Words and Phrases 313-28 (perm. ed. 1970). The authorities collected there show that this meaning attaches to the word, whether it is used in civil or criminal statutes.<sup>[9]</sup>

The court held that a plea of guilty to second degree felony murder is sustainable without proof that the killing was intentional. Therefore, a plea of guilty to such a charge did not admit that the killing was willful. However, in holding summary judgment inappropriate, the court noted that the secondary beneficiaries were still entitled to show that the slayer intended to kill the person she had assaulted. In making such a showing, the beneficiaries would be "aided by the presumption that a person is presumed to have intended the usual and ordinary

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<sup>6</sup> Cook v. Gisler, 20 Wn. App. 677, 683, 582 P.2d 550 (1978).

<sup>7</sup> RCW 9A.32.010 ("Homicide is the killing of a human being by the act . . . and is either (1) murder, (2) homicide by abuse, (3) manslaughter, (4) excusable homicide, or (5) justifiable homicide.").

<sup>8</sup> 86 Wn.2d 44, 47, 541 P.2d 989 (1975).

<sup>9</sup> Jones, 86 Wn.2d at 47.

consequences of his acts."<sup>10</sup> The Jones court has established a mens rea requirement for the slayer statute. The question then is to what extent Hoge's "insanity" interfered or prevented him from forming the intent to kill. On this limited record we simply cannot tell.

Here, the trial court applied the definition of willfulness set forth in the modern criminal code rather than the standard enunciated by the Supreme Court in Jones. The criminal code defines willfulness:

Requirement of Willfulness Satisfied by Acting Knowingly. A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears.<sup>[11]</sup>

Knowledge is further defined in the criminal code:

KNOWLEDGE. A person knows or acts knowingly or with knowledge when:

(i) he is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or

(ii) he has information which would lead a reasonable man in same situation to believe that facts exist which facts are described by a statute defining an offense.<sup>[12]</sup>

Under the modern criminal code, one who acts willfully may in fact have acted with less mens rea than one who acts with design and intent. As the law of this state, the Supreme Court's definition of willfully in Jones is the applicable standard. We are then left with the question of the degree to which Hoge's delusion prevented him from forming the intent to kill. This factual determination

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<sup>10</sup> Jones, 86 Wn.2d at 48. We note the apparent inconsistency between this later dicta and the court's holding.

<sup>11</sup> RCW 9A.08.010(4).

<sup>12</sup> RCW 9A.08.010(1)(b).

is best left to the trial court and further psychiatric evidence. Therefore, we remand for further proceedings in accordance with this decision.

Grosse, J.

WE CONCUR:

Demp, J.

Eleuterio, J.

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

IN RE THE ESTATE OF PAMELA L. )  
KISSINGER; LEONARD HOSS, )  
Personal Representative, )  
 )  
Respondent, )  
 )  
v. )  
 )  
JOSHUA HOGE, )  
 )  
Appellant. )

No. 58932-6-1

ORDER DENYING MOTIONS  
FOR RECONSIDERATION

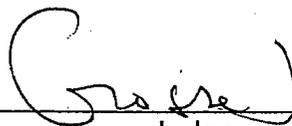
The appellant and respondent have filed motions for reconsideration herein. The court has taken the motions under consideration and has determined that both should be denied.

Now, therefore, it is hereby

ORDERED that the motions for reconsideration are denied.

Done this 17<sup>th</sup> day of January, 2008.

FOR THE COURT:

  
\_\_\_\_\_  
Judge

FILED  
COURT OF APPEALS DIV #1  
STATE OF WASHINGTON  
2008 JAN 17 AM 8:56

9A.12.010. Insanity

To establish the defense of insanity, it must be shown that:

(1) At the time of the commission of the offense, as a result of mental disease or defect, the mind of the actor was affected to such an extent that:

(a) He was unable to perceive the nature and quality of the act with which he is charged;  
or

(b) He was unable to tell right from wrong with reference to the particular act charged.

(2) The defense of insanity must be established by a preponderance of the evidence.

**HISTORY:** 1975 1st ex.s. c 260 § 9A.12.010.

9A.32.010. Homicide defined

Homicide is the killing of a human being by the act, procurement, or omission of another, death occurring at any time, and is either (1) murder, (2) homicide by abuse, (3) manslaughter, (4) excusable homicide, or (5) justifiable homicide.

**HISTORY:** 1997 c 196 § 3; 1987 c 187 § 2; 1983 c 10 § 1; 1975 1st ex.s. c 260 § 9A.32.010.

10.77.030. Establishing insanity as a defense

(1) Evidence of insanity is not admissible unless the defendant, at the time of arraignment or within ten days thereafter or at such later time as the court may for good cause permit, files a written notice of his or her intent to rely on such a defense.

(2) Insanity is a defense which the defendant must establish by a preponderance of the evidence.

(3) No condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute insanity.

**HISTORY:** 1998 c 297 § 32; 1974 ex.s. c 198 § 3; 1973 1st ex.s. c 117 § 3.

## 10.77.080. Motion for acquittal on grounds of insanity -- Hearing -- Findings

The defendant may move the court for a judgment of acquittal on the grounds of insanity: PROVIDED, That a defendant so acquitted may not later contest the validity of his or her detention on the grounds that he or she did not commit the acts charged. At the hearing upon the motion the defendant shall have the burden of proving by a preponderance of the evidence that he or she was insane at the time of the offense or offenses with which he or she is charged. If the court finds that the defendant should be acquitted by reason of insanity, it shall enter specific findings in substantially the same form as set forth in RCW 10.77.040. If the motion is denied, the question may be submitted to the trier of fact in the same manner as other issues of fact.

**HISTORY:** 1998 c 297 § 37; 1974 ex.s. c 198 § 7; 1973 1st ex.s. c 117 § 8.

11.84.010. Definitions

As used in this chapter:

(1) "Slayer" shall mean any person who participates, either as a principal or an accessory before the fact, in the wilful and unlawful killing of any other person.

(2) "Decedent" shall mean any person whose life is so taken.

(3) "Property" shall include any real and personal property and any right or interest therein.

**HISTORY:** 1965 c 145 § 11.84.010. Prior: 1955 c 141 § 1.

11.84.020. Slayer not to benefit from death

No slayer shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following.

**HISTORY:** 1965 c 145 § 11.84.020. Prior: 1955 c 141 § 2.